

AMENDED IN ASSEMBLY APRIL 4, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2778

Introduced by Assembly Member Calderon

February 25, 2002

An act to amend Section 10506 of, *and to add Section 10290.5 to*, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, as amended, Calderon. Insurance.

Existing law provides for the regulation of insurers by the Insurance Commissioner. Existing law prohibits the issuance or delivery to a person of a disability insurance policy until 30 days after filing a copy of the policy form with the commissioner unless the commissioner gives written approval prior to that time. Existing law also prohibits the issuance by an insurer of contracts for variable life insurance benefits until a showing has been made to the commissioner indicating that the insurer's condition or method of operation in connection with the contracts is not hazardous to the public or the insurer's policyholders.

This bill would enact alternative provisions that require the filing of group and individual disability income insurance forms, contracts, and policies with the commissioner but authorize an insurer to use those forms, contracts, and policies immediately. The bill would give the commissioner 90 days to approve or disapprove those forms, contracts, and policies or they would be deemed approved. The bill would also require an insurer to notify the commissioner at any time it implements a material change to a previously approved policy or contract providing

for variable life insurance benefits but authorizes an insurer to make those changes without the commissioner's prior approval.

~~Existing law permits any domestic life insurance company to allocate to one or more separate accounts, in accordance with the terms of a written agreement, any amounts that are paid to the company in connection with specified pension and retirement plans or policies, and that are to be or may be applied in payment of specified benefits. Existing law also authorizes a domestic insurer to allocate death payments, proceeds of matured endowments, dividends, or surrender values those accounts at the request of a policyholder, a contractholder, or the beneficiary of a policy or contract.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 10506 of the Insurance Code is~~

2 ~~SECTION 1.~~ *It is the intent of the Legislature to provide for the*
3 *fair and efficient review by the California Department of*
4 *Insurance of insurance forms, policies, and contracts. Expeditious*
5 *review is necessary for insurance markets that provide valuable*
6 *and innovative products to the consuming public at affordable*
7 *premium levels and provide maximum benefits and returns on*
8 *funds invested for retirement needs. Expeditious approvals should*
9 *be provided only in strict accordance with statutory requirements,*
10 *consistent with uniformity of treatment in other states and with the*
11 *highest standards of consumer protection. By allowing the free*
12 *flow of needed insurance products it is expected that markets, job*
13 *creation, and the California economy will be benefited.*

14 ~~SEC. 2.~~ ~~Section 10290.5 is added to the Insurance Code, to~~
15 ~~read:~~

16 ~~10290.5.~~ ~~As an alternative to Section 10290, the following~~
17 ~~filing procedures are established in order to promote a more~~
18 ~~efficient process for review and approval of group and individual~~
19 ~~disability income insurance forms in California and to ensure a~~
20 ~~more timely method of delivering group and individual disability~~
21 ~~income policy forms to California consumers:~~

22 ~~(a) All filings of group and individual disability income~~
23 ~~insurance forms, contracts, and policies shall be made with the~~

1 department prior to any issuance, delivery, or use of those forms,
2 contracts, or policies in the state of California.

3 (b) An insurer may immediately issue, deliver, and use those
4 forms, contracts, or policies, provided the filing pursuant to
5 subdivision (a) is accompanied by a certification on behalf of the
6 filing insurer, signed by either an attorney licensed to practice law
7 in this state, an actuary familiar with the requirements of
8 California law and the applicable rules and regulations, or the
9 chief executive officer of the filing insurer or a person designated
10 by that officer.

11 (c) The certification required by subdivision (b) shall state that
12 it is made on behalf of the insurer, that the insurer is bound by the
13 representations made in the certification and that the person
14 certifying has reviewed the filing and that the filing is, to the best
15 of that individual's knowledge, information and belief, in
16 compliance with the provisions of California law and the adopted
17 rules and regulations applicable to the policy, contract,
18 application, rider, endorsement, or other form being filed.

19 (d) At the expiration of 90 days, after receipt by the department
20 of a form, contract, or policy filed pursuant to subdivision (a), the
21 form, contract, or policy shall be deemed approved by the
22 department unless prior to that time it has been affirmatively
23 approved or disapproved by a written order of the commissioner
24 or the insurer has requested in writing that the approval period be
25 extended for an additional period not to exceed 45 days. The
26 request for an extension by an insurer shall be considered granted
27 upon being received by the department. On the expiration of the
28 extension, the form shall be deemed approved unless the
29 commissioner has taken affirmative action to either approve or
30 disapprove the form before the expiration of the extension.

31 If the policy, contract, or form is affirmatively disapproved by
32 the commissioner, the insurer, upon receiving written notice
33 thereof, shall cease issuing or using the policy, contract, or form
34 if the insurer has in fact issued, delivered, or used the form,
35 contract, or policy in this state.

36 (e) If a contract, policy, or form is filed with the commissioner
37 pursuant to this section is used, issued, or delivered prior to either
38 the affirmative or statutory deemed approval established by this
39 section, and if corrections are required to be made before the
40 commissioner will approve the contract, policy, or form in order

1 *to bring it into compliance with the provisions of California law*
2 *and the applicable rules and regulations, the commissioner may*
3 *order the insurer to correct the contract, policy, or form previously*
4 *issued, delivered, or used, by endorsement or rider.*

5 SEC. 3. *Section 10506 of the Insurance Code is amended to*
6 *read:*

7 10506. (a) Any domestic life insurance company may, after
8 adoption of a resolution by its board of directors, allocate to one
9 or more separate accounts, in accordance with the terms of a
10 written agreement, any amounts which are paid to the company in
11 connection with a pension, retirement, retirement medical
12 benefits, or profit-sharing plan, or program for one or more
13 persons, or with an individual or group variable life insurance
14 policy, and which are to be, or may be, applied in payment or in
15 making provision for payment of proceeds or benefits under the
16 company's policies, contracts, or agreements of retirement
17 benefits, and other benefits incidental thereto, in fixed or variable
18 dollar amounts, or both. The income, if any, and gains or losses,
19 realized or unrealized, on each account shall be credited to or
20 charged against the amount allocated to the account in accordance
21 with the agreement, without regard to the other income, gains or
22 losses of the company. The amounts allocated to the accounts and
23 accumulations thereon, by any life insurance company shall be
24 invested and reinvested as specified in the policy, contract, or
25 agreement without regard to any requirements or limitations
26 prescribed by the laws of this state governing the investments of
27 insurance companies, provided that the amounts allocated to
28 separate accounts for which the insurer has issued guarantees of
29 benefits as to dollar amount and duration or of funds as to all or part
30 of the principal amount thereof or stated rate of interest, and the
31 accumulations thereon pursuant to Section 10506.4, shall be
32 invested in the types of investments permitted to life insurance
33 companies for investments held in the insurer's general account as
34 described in Article 3 (commencing with Section 1170), Article 4
35 (commencing with Section 1190), and Article 4.6 (commencing
36 with Section 1211) of Chapter 2 of Part 2 of Division 1 (excluding
37 Section 1212 thereof), except that the approved method of
38 operations and applicable policy, contract, or agreement
39 provisions shall govern the amount of these investments held in the
40 separate account. However, with regard to variable life insurance

1 separate accounts and accumulations thereon, the separate
2 accounts shall have sufficient net investment income and readily
3 marketable assets to meet anticipated obligations under policies
4 funded by the account. The limitations contained in Sections
5 1192.4 and 1198 are not applicable to these investments. These
6 investments shall not be included in determining the propriety of
7 other investments of the company. The liability of the company
8 with respect thereto, but only to the extent prescribed in the
9 agreement, shall be shown on the statement of the company in the
10 manner prescribed by the commissioner. Amounts allocated by an
11 insurance company to separate accounts in the exercise of the
12 power granted by this section shall be owned by the company, but
13 shall not be chargeable with liabilities arising out of any other
14 business the company may conduct except and to the extent
15 provided in the policy, contract, or agreement. The company shall
16 not hold itself out to be a trustee in respect to these amounts.

17 (b) In addition to amounts otherwise allocated to separate
18 accounts, a domestic life insurer may allocate to the account or
19 accounts amounts which otherwise would be subject to investment
20 in accordance with Article 4 (commencing with Section 1190) of
21 Chapter 2 of Part 2 of Division 1. The aggregate of these additional
22 amounts shall not, however, exceed 1 percent of its admitted assets
23 as of the preceding December 31, or 5 percent of the excess of its
24 admitted assets over its liabilities and required reserves as of the
25 preceding December 31, whichever is the smaller. The company
26 shall be entitled to withdraw at any time, in whole or in part, its
27 participation in any separate account to which funds have been
28 allocated as provided in this subdivision and to receive, upon
29 withdrawal, its proportionate share of the value of the assets of the
30 separate account at the time of withdrawal.

31 (c) In addition to the allocations to separate accounts provided
32 for in subdivision (a) ~~of this section~~, a domestic insurer may, at the
33 request of a policyholder or contractholder or the beneficiary of a
34 policy or contract, allocate to any such separate account or
35 accounts death payments, proceeds of matured endowments,
36 dividends, or surrender values.

37 (d) Except as otherwise provided in Section 10506.4, or with
38 the approval of the commissioner, and under such conditions as to
39 investments and other matters as he or she may prescribe, which
40 shall recognize the guaranteed nature of the benefits provided,

1 reserves for (1) benefits guaranteed as to dollar amount and
2 duration and (2) funds guaranteed as to principal amount or stated
3 rate of interest, shall not be maintained in a separate account that,
4 as provided under applicable policy, contract, or agreement, is or
5 is not chargeable with liabilities arising out of any other business
6 the company may conduct.

7 (e) Unless otherwise approved by the commissioner, assets
8 allocated to a separate account shall be valued at their market
9 value, or at amortized cost if it approximates market value within
10 the limits and constraints imposed by the United States Securities
11 and Exchange Commission, on the date of valuation, or, if there
12 is no readily available market, then as provided under the terms of
13 the contract or the rules or other written agreement applicable to
14 the separate account. Unless otherwise approved by the
15 commissioner, the portion of any of the assets of the separate
16 account equal to the company's reserve liability with regard to the
17 guaranteed benefits and funds referred to in subdivision (d) shall
18 be valued in accordance with the rules otherwise applicable to the
19 company's assets.

20 (f) (1) Except as provided in paragraph (2) of subdivision (f),
21 a sale, exchange, or other transfer of assets may not be made by a
22 company between any of its separate accounts, or between any
23 other of its investment accounts and one or more of its separate
24 accounts unless, in case of a transfer into a separate account, the
25 transfer is made solely to establish the account or to support the
26 operation of the contracts with respect to the separate account to
27 which the transfer is made, and unless the transfer, whether into or
28 from a separate account is made (1) by a transfer of cash, or (2) by
29 a transfer of securities having a readily determinable market value,
30 and the transfer of securities is approved by the commissioner. The
31 commissioner may approve other transfers among the accounts if,
32 in his or her opinion, the transfer would not be inequitable.

33 (2) Transfers from an insurer's general account to one or more
34 of its separate accounts to establish and maintain reserves for the
35 guarantees authorized by Section 10506.4 shall only be made in
36 cash in accordance with methods of operations approved pursuant
37 to subdivision (c) of Section 10506.4. A transfer shall not operate
38 to increase the amounts permitted to be allocated by an insurer to
39 the separate accounts pursuant to this subdivision or by

subdivision (b) of Section 10506, and the provisions of that subdivision shall not limit these transfers.

(g) Any domestic life insurance company which establishes one or more separate accounts pursuant to this section may provide for special voting rights and procedures for participants in the separate account relating to investment policy, investment advisory services, and selection of certified public accountants in relation to the administration of the assets in any the separate account. The voting rights shall be in addition to, and shall not affect, voting rights of mutual insurers.

(h) The purpose and intent of this section is to permit the issuance and delivery of policies or contracts, in connection with a pension, retirement, retirement medical benefits, or profit-sharing plan, or program for one or more persons, or policies of variable life insurance, providing for the payment of benefits in fixed or variable amounts, or both, and the establishment of separate accounts by domestic companies for the administration of and investments under these agreements. To protect the public and policyholders located in this state from hazardous operation by domestic and foreign companies, and to further the purpose and provision of this section, no domestic or foreign life insurance company shall undertake the issuance of any contract providing for variable benefits until the company has satisfied the commissioner that its condition or method of operation in connection with the issuance of these contracts shall not be such as would render its operation hazardous to the public or its policyholders in this state and, in the case of a foreign or alien insurer, that it meets the conditions prescribed in Section 716, for the issuance of a certificate of authority. In determining the qualification of a company requesting authority to issue contracts providing for variable benefits within this state the commissioner shall consider among other things, (1) the history of the company; (2) the character, responsibility, and general fitness of the officers and directors of the company; (3) the regulation of a foreign company by its state of domicile; (4) the adequacy of the investment management which the company is providing; and (5) the company's arrangements for the supervision of the marketing of the contracts. *An insurer that has demonstrated to the commissioner that its condition or method of operation would not render its operation hazardous to the public or its policyholders*

1 *shall notify the commissioner at any time it implements a material*
2 *change to a previously approved policy or contract providing*
3 *variable benefits. The notification shall be accompanied by a*
4 *certification signed by an executive officer having responsibility*
5 *for contracts providing variable benefits demonstrating that the*
6 *change complies with relevant statutes and regulations. The*
7 *commissioner may review the notification to ensure the continued*
8 *qualification of the insurer to issue and deliver those policies and*
9 *contracts. The commissioner may make reasonable rules and*
10 *regulations as he or she considers necessary, proper, and advisable*
11 *concerning the issuance and delivery of these policies and*
12 *contracts and the payment of benefits thereunder and the manner*
13 *in which the separate accounts shall be administered and which*
14 *types of policies and contracts, if any, shall be subject to his or her*
15 *approval prior to issue. Notification of a material change,*
16 *including, but not limited to, the addition of mutual fund*
17 *investment options to a previously approved policy or contract*
18 *providing variable benefits shall not be subject to the*
19 *commissioner's approval prior to implementation.*

20 However, no company may provide variable benefits in its
21 contracts unless it is an admitted insurer having and maintaining
22 a combined capital and surplus of at least ten million dollars
23 (\$10,000,000).

24 (i) (1) Any contract providing benefits payable in variable
25 amounts delivered or issued for delivery in this state on or after the
26 effective date of the amendments to this section enacted at the 1971
27 Regular Session of the Legislature shall contain a statement of the
28 essential features of the procedures to be followed by an insurance
29 company in determining the dollar amount of these variable
30 benefits. Any contract under which the benefits vary to reflect
31 investment experience, including a group contract and any
32 certificate in evidence of variable benefits issued thereunder, shall
33 state that the dollar amount shall so vary, and shall contain on its
34 first page a statement to the effect that the benefits thereunder are
35 on a variable basis. Except for Article 3a (commencing with
36 Section 10159.1) of Chapter 1 of Part 2 of Division 2, in the case
37 of a variable life insurance policy, and except as otherwise
38 provided in this section, all pertinent provisions of this code shall
39 apply to separate accounts and contracts relating thereto. Any
40 variable life insurance contract, delivered or issued for delivery in

1 this state on or after the effective date of the amendments to this
2 section enacted at the 1992 Regular Session of the Legislature,
3 shall contain such nonforfeiture provisions as are appropriate to
4 such a contract.

5 (2) The reserve liability for variable contracts shall be
6 established in accordance with actuarial procedures that recognize
7 the variable nature of the benefits provided and any mortality
8 guarantees.

9 (j) No insurer shall issue anywhere any group variable life
10 insurance policy for which the master contractholder or any
11 covered party is an individual residing in this state or is a
12 corporation, association, trust, or other legal entity that is either
13 domiciled in or has its principal place of business in this state,
14 unless the insurer has become qualified to issue variable life
15 insurance policies and its group master policy form together with
16 all forms of certificates or notices thereunder have been approved
17 by the commissioner. Group variable life insurance policies shall
18 be issued only to groups referred to in Chapter 2 (commencing
19 with Section 10200) of Part 2 of Division 2.

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22 **All matter omitted in this version of the**
23 **bill appears in the bill as introduced in the**
24 **Assembly, February 25, 2002 (JR 11)**
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